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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE, Plaintiff and Respondent, v. TRAVIS ROSENBLATT, Defendant and Appellant.	2d Crim. No. B294039 (Super. Ct. No. 2018004063) (Ventura County)

Travis Rosenblatt appeals the judgment entered after he pled guilty to driving under the influence of alcohol with a prior conviction for drunk driving causing bodily injury of another person (Veh. Code,[1] §§ 23152, subd. (a), 23153, subd. (a)). The trial court sentenced him to two years in state prison, declared him a habitual offender, and ordered his driver's license revoked for four years. (§ 23550.5, subd. (d).) Appellant contends the

[1] All statutory references are to the Vehicle Code unless otherwise stated.

court violated his plea agreement by revoking his license for four years rather than one. We affirm.

FACTS AND PROCEDURAL HISTORY

In February 2018, appellant was stopped for suspected drunk driving. He nearly fell over as he exited his vehicle and was too intoxicated to perform a field sobriety test. Testing subsequently revealed he had a blood-alcohol level of .20.

Appellant was charged with driving under the influence of alcohol with a prior conviction for drunk driving causing bodily injury of another person (§§ 23152, subd. (a), 23153, subd. (a), 23550.5; count 1), and driving with a blood alcohol level greater than .08 percent with a prior conviction for drunk driving causing bodily injury of another person (§§ 23152, subd. (b), 23153, subd. (a), 23550.5, subd. (a); count 2)). It was also alleged as to both counts that appellant had a prior strike conviction (Pen. Code, §§ 667, subds. (c)(1) & (e)(1), 1170.12, subds. (a)(1) & (c)(1)) and a prior 2008 conviction for driving under the influence, and that he had a blood alcohol level of .15 or higher while committing the charged offenses (§ 23578).

Appellant initially pled not guilty. At the outset of an early disposition conference, appellant's attorney stated that appellant would "be entering a change of plea. The judge offered him a two-year disposition, striking the strike." During the change-of-plea colloquy, appellant acknowledged that he had signed and initialed a felony disposition statement indicating he was pleading guilty to count 1 and admitting all of the allegations as to that count. Appellant also acknowledged his understanding, in both the felony disposition statement and his plea colloquy, that by pleading guilty he could be sentenced to up to six years in state prison followed by a three-year term of parole.

Appellant's felony disposition statement is on a form prepared by the District Attorney's office. The document, however, is not signed by the prosecution. The sections regarding the District Attorney's reasons for agreeing or objecting to the change of plea and his position on the sentence are also left blank.

In executing the felony disposition statement, appellant signed his initials to acknowledge his understanding of the many actual and potential consequences of his guilty plea and admissions. One acknowledgment states that "[m]y driver's license will be revoked for a period of 1 years [*sic*]." The "1" is handwritten. Appellant also initialed his understanding that "[u]pon conviction of a third or subsequent violation of Vehicle Code section 23152 or 23153, I will be designated as a habitual traffic offender for a period of three years after my conviction (Veh. Code § 23546(b), 23550(b), 23550.5(b), 23566(d) . . . ." Appellant further acknowledged his understanding "that the DMV [Department of Motor Vehicles] may restrict, suspend, or revoke my license under an administrative procedure which is separate from this criminal action."

During appellant's plea colloquy, no mention was made of any of the provisions in the felony disposition statement regarding the revocation or suspension of his driver's license. Appellant entered his plea of guilty to count 1 and admitted the attendant allegations, the court accepted his plea and admissions, and set the matter for sentencing.

At the outset of the sentencing hearing, the trial court stated: "The Court had made a tentative commitment to impose the mid-term of two years on Count 1 and strike the strike offense . . . over the People's objection." The prosecutor replied,

"It is our position that the strike should be imposed. I think we're at 32 months . . . , but I understand the Court's position."

After considering counsels' arguments, the court stated that "over the People's objection" it would "honor[] its commitment it made to [appellant] at the time of the plea" by striking his prior strike and imposing a two-year sentence. The court also ordered that appellant's "[p]rivilege to drive a motor vehicle is revoked for a period of four years effective today . . . . He is designated and found to be a habitual traffic offender under [section] 23550.5(d)."

Defense counsel interjected: "[Appellant] advises me that he thought that the license suspension was going to be for one year rather than four years. I don't know if this is a mandatory four years." The court replied, "[h]e's a habitual offender now. That's part and parcel. . . . [I]t is a four-year imposition [*sic*] at the time of sentencing."

At the conclusion of the sentencing hearing, the trial court told the prosecutor "[t]here is Count 2 with a special allegation that needs to be addressed." The prosecutor moved to dismiss count 2 and the motion was granted.

DISCUSSION

Appellant contends the trial court violated his plea agreement by ordering his driver's license revoked for four years instead of one. We are not persuaded.

As the People correctly note, there was no plea agreement here. ""A plea agreement is, in essence, a contract *between the defendant and the prosecutor* to which the court consents to be bound."" (*People v. Segura* (2008) 44 Cal.4th 921, 931, italics added.) "'Pursuant to this procedure the defendant agrees to plead guilty in order to obtain a reciprocal benefit, generally

consisting of a less severe punishment than that which could result if he were convicted of all offenses charged. . . . Judicial approval is an essential condition precedent to the effectiveness of the "bargain" worked out by the defense and prosecution.' [Citation.] Because the charging function is entrusted to the executive, 'the court has no authority to substitute itself as the representative of the People in the negotiation process and under the guise of "plea bargaining" to "agree" to a disposition of the case over prosecutorial objection.' [Citation.]" (*People v. Clancey* (2013) 56 Cal.4th 562, 570.)

Appellant did not plead guilty pursuant to any agreement with the prosecutor; rather, he did so in response to the trial court's indicated two-year sentence. "When a trial court properly indicates a sentence, it has made no promise that the sentence will be imposed. Rather, the court has merely disclosed . . . what the court views . . . as the appropriate sentence so that each party may make an informed decision." (*People v. Clancey*, *supra,* 56 Cal.4th at p. 575, italics omitted.) At sentencing, "the trial court may . . . conclude that the indicated sentence is not appropriate." (*Id.* at p. 576.)

Moreover, at the change of plea hearing there was no mention of the revocation of appellant's driver's license. A handwritten notation in appellant's felony disposition statement refers to a one-year revocation, but it is not clear from the record who added that notation.

In any event, in light of appellant's guilty plea and admissions, a four-year revocation of his driver's license was mandatory. Appellant does not challenge his designation as a habitual offender under section 23550.5. The statute provides that the driving privileges of a habitual offender "shall be

revoked by the [DMV] pursuant to paragraph (7) of subdivision (a) of Section 13352" and that "[t]he court shall require the person to surrender the driver's license to the court in accordance with Section 13550." (§ 23550.5, subd. (c).) As relevant here, section 13352, subdivision (a)(7)(A) makes clear that "upon a conviction or finding of a violation of Section 23152 punishable under Section 23550 or 23550.5, . . . the [driving] privilege *shall* be revoked for a period of four years." (Italics added.)

The court thus had no authority to order anything other than a four-year revocation. If appellant's guilty plea was induced by his mistaken belief otherwise, his remedy was to seek the withdrawal of his plea prior to judgment. (Pen. Code, § 1018; *People v. Gontiz* (1997) 58 Cal.App.4th 1309, 1314, fn. 3, disapproved on another ground in *People v. Superior Court (Zamudio*) (2000) 23 Cal.4th 183, 200, fn. 8; *People v. Johnson* (1995) 36 Cal.App.4th 1351, 1357.) He is not entitled to the specific performance of an unnegotiated "term" of his plea that the court had no authority to enforce.

DISPOSTION

The judgment is affirmed.

NOT TO BE PUBLISHED.

PERREN, J.

We concur:

GILBERT, P. J. TANGEMAN, J.

Bruce A. Young, Judge
David M. Hirsch, Judge
Superior Court County of Ventura

Richard B. Lennon, under appointment by the Court of Appeal, for Defendant and Appellant.

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